

Assembly Bill No. 1404

Passed the Assembly September 12, 2009

Chief Clerk of the Assembly

Passed the Senate September 11, 2009

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2009, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Section 38505 of, and to add Section 38573 to, the Health and Safety Code, relating to air pollution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1404, De Leon. California Global Warming Solutions Act of 2006: offsets.

The California Global Warming Solutions Act of 2006 designates the State Air Resources Board as the state agency charged with monitoring and regulating sources of emissions of greenhouse gases. The state board is required to adopt a statewide greenhouse gas emissions limit equivalent to the statewide greenhouse gas emissions level in 1990 to be achieved by 2020, and to adopt rules and regulations in an open public process to achieve the maximum technologically feasible and cost-effective greenhouse gas emission reductions. The act authorizes the state board to adopt by regulation, after a public workshop, a schedule of fees to be paid by the sources of greenhouse gas emissions regulated pursuant to the act. The fee revenues are deposited into the Air Pollution Control Fund and are available, upon appropriation by the Legislature, for purposes of carrying out the act. The state board is authorized to adopt market-based compliance mechanisms, as defined, meeting specified requirements to be used for compliance with those regulations. The state board is required, before including any market-based compliance mechanism, to maximize additional environmental and economic benefits for California, as appropriate.

This bill would require the state board, if the state board allows the use of market-based compliance mechanisms, to limit the use of compliance offsets, as defined, that meet specific criteria, to no more than 10% of the greenhouse gas emission reductions expected from market mechanisms during the compliance period. The bill would require the state board to apply the limit as a percentage of each regulated party's reported emissions in a compliance period. The bill would require the state board to impose an administrative fee pursuant to the fee authority described above for deposit into the fund to pay for expenses related to state board administration

of the compliance offset program, upon appropriation by the Legislature.

This bill would incorporate changes to Section 38505 of the Health and Safety Code proposed by both this bill and SB 104, which would become operative only if both bills are enacted and this bill is enacted after SB 104.

The people of the State of California do enact as follows:

SECTION 1. Section 38505 of the Health and Safety Code is amended to read:

38505. For the purposes of this division, the following terms have the following meanings:

(a) “Allowance” means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) “Alternative compliance mechanism” means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. “Alternative compliance mechanism” includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) “Carbon dioxide equivalent” means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) “Cost-effective” or “cost-effectiveness” means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) “Compliance offset” means a quantified reduction in emissions of greenhouse gases in a sector different from the sector or sectors regulated by a greenhouse gas emission limit for which a market-based compliance mechanism has been adopted by the state board, that is used for compliance of that greenhouse gas emission limit by a greenhouse gas emission source regulated by that limit.

(f) “Direct emission reduction” means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(g) “Emissions reduction measure” means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(h) “Greenhouse gas” or “greenhouse gases” includes all of the following gases: carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(i) “Greenhouse gas emissions limit” means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(j) “Greenhouse gas emission source” or “source” means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(k) “Leakage” means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(l) “Market-based compliance mechanism” means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(m) “State board” means the State Air Resources Board.

(n) “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(o) “Statewide greenhouse gas emissions limit” or “statewide emissions limit” means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38550).

SEC. 1.5. Section 38505 of the Health and Safety Code is amended to read:

38505. For the purposes of this division, the following terms have the following meanings:

(a) “Allowance” means an authorization to emit, during a specified year, up to one ton of carbon dioxide equivalent.

(b) “Alternative compliance mechanism” means an action undertaken by a greenhouse gas emission source that achieves the equivalent reduction of greenhouse gas emissions over the same time period as a direct emission reduction, and that is approved by the state board. “Alternative compliance mechanism” includes, but is not limited to, a flexible compliance schedule, alternative control technology, a process change, or a product substitution.

(c) “Carbon dioxide equivalent” means the amount of carbon dioxide by weight that would produce the same global warming impact as a given weight of another greenhouse gas, based on the best available science, including from the Intergovernmental Panel on Climate Change.

(d) “Cost-effective” or “cost-effectiveness” means the cost per unit of reduced emissions of greenhouse gases adjusted for its global warming potential.

(e) “Compliance offset” means a quantified reduction in emissions of greenhouse gases in a sector different from the sector or sectors regulated by a greenhouse gas emission limit for which a market-based compliance mechanism has been adopted by the state board, that is used for compliance of that greenhouse gas emission limit by a greenhouse gas emission source regulated by that limit.

(f) “Direct emission reduction” means a greenhouse gas emission reduction action made by a greenhouse gas emission source at that source.

(g) “Emissions reduction measure” means programs, measures, standards, and alternative compliance mechanisms authorized pursuant to this division, applicable to sources or categories of sources, that are designed to reduce emissions of greenhouse gases.

(h) “Greenhouse gas” or “greenhouse gases” includes all of the following gases:

- (1) Carbon dioxide.
- (2) Methane.
- (3) Nitrous oxide.
- (4) Hydrofluorocarbons.
- (5) Perfluorocarbons.
- (6) Sulfur hexafluoride.
- (7) Nitrogen trifluoride.

(i) “Greenhouse gas emissions limit” means an authorization, during a specified year, to emit up to a level of greenhouse gases specified by the state board, expressed in tons of carbon dioxide equivalents.

(j) “Greenhouse gas emission source” or “source” means any source, or category of sources, of greenhouse gas emissions whose emissions are at a level of significance, as determined by the state board, that its participation in the program established under this division will enable the state board to effectively reduce greenhouse gas emissions and monitor compliance with the statewide greenhouse gas emissions limit.

(k) “Leakage” means a reduction in emissions of greenhouse gases within the state that is offset by an increase in emissions of greenhouse gases outside the state.

(l) “Market-based compliance mechanism” means either of the following:

(1) A system of market-based declining annual aggregate emissions limitations for sources or categories of sources that emit greenhouse gases.

(2) Greenhouse gas emissions exchanges, banking, credits, and other transactions, governed by rules and protocols established by the state board, that result in the same greenhouse gas emission reduction, over the same time period, as direct compliance with a greenhouse gas emission limit or emission reduction measure adopted by the state board pursuant to this division.

(m) “State board” means the State Air Resources Board.

(n) “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases in the state, including all emissions of greenhouse gases from the generation of electricity delivered to and consumed in California, accounting for transmission and distribution line losses, whether the electricity is generated in state

or imported. Statewide emissions shall be expressed in tons of carbon dioxide equivalents.

(o) “Statewide greenhouse gas emissions limit” or “statewide emissions limit” means the maximum allowable level of statewide greenhouse gas emissions in 2020, as determined by the state board pursuant to Part 3 (commencing with Section 38550).

SEC. 2. Section 38573 is added to the Health and Safety Code, to read:

38573. If the state board allows the use of market-based compliance mechanisms pursuant to Section 38570, all of the following shall apply:

(a) The state board shall limit the use of compliance offsets within a compliance period to no more than 10 percent of the greenhouse gas emission reductions expected from market mechanisms during that compliance period. The state board shall apply the limit as a percentage of each regulated party’s reported emissions in a compliance period.

(b) The state board shall approve compliance offsets only if those compliance offsets meet all of the following criteria:

(1) The compliance offset has been verified by an independent, third-party verifier who has been certified and assigned by the state board.

(2) The compliance offset meets the requirements of a protocol approved by the state board and the independent verifier has certified that the emission reductions represented by the compliance offset meets the requirements of a protocol adopted by the state board.

(3) The compliance offset is entered into a tracking system developed or designated by the state board and assigned a unique serial number.

(4) The compliance offset is permanently retired and the emission reductions represented by the compliance offset have not been claimed by any other entity.

(5) The compliance offset shall not cause or contribute to significant adverse effects on human health or the environment as determined by the state board.

(6) The compliance offset is not created from a project registered in the Kyoto Protocol’s Clean Development Mechanism registry.

(c) The state board shall consult with air pollution control districts and air quality management districts in developing

protocols for compliance offsets, implementing an offset tracking system, and identifying third-party verifiers for certification.

(d) Compliance offsets shall meet the requirements for emission reductions in Section 38562. The state board may adopt requirements in addition to the requirements of this section for compliance offsets.

(e) Subject to subdivision (a), the state board shall establish incentives and guidelines that prioritize the use of compliance offsets in the following order:

(1) Compliance offsets that result in air quality benefits to California communities disproportionately impacted by air pollution, as determined by the state board. The state board shall identify communities disproportionately impacted by air pollution, in consultation with air pollution control districts and air quality management districts and other stakeholders. A preference shall be made for compliance offsets that benefit air quality in the same air pollution control district or air quality management district where the regulated party claiming the offset credit is located.

(2) Compliance offsets that comply with Section 38565 or will result in the creation of green jobs in the state.

(3) Compliance offsets that result in cobenefits to public health and the environment anywhere in the state.

(f) The state board shall impose an administrative fee pursuant to Section 38597, the revenues of which shall be placed into the Air Pollution Control Fund and shall be available, upon appropriation by the Legislature, to pay for expenses related to state board administration of the compliance offset program. General Fund moneys shall not be expended for the administration of the compliance offset program.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 38505 of the Health and Safety Code proposed by both this bill and SB 104. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2010, (2) each bill amends Section 38505 of the Health and Safety Code, and (3) this bill is enacted after SB 104, in which case Section 1 of this bill shall not become operative.

Approved _____, 2009

Governor